

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DAVID FARRELL, Movant, vs. UNITED STATES OF AMERICA, Respondent.	4:22-CV-04161-KES ORDER ADOPTING THE REPORT AND RECOMMENDATION IN FULL AND GRANTING RESPONDENT'S MOTION TO DISMISS
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Movant, David Farrell, filed a motion under 28 U.S.C. § 2255 to vacate, correct, or set aside his sentence. Docket 1. Respondent moved to dismiss the action for failure to state a claim. Docket 7. The matter was referred to a United States Magistrate Judge under 28 U.S.C. § 636(b)(1)(B) and this court's October 16, 2014, standing order.

On February 15, 2023, Magistrate Judge Duffy submitted a report and recommended that Farrell's motion be dismissed and respondent's motion to dismiss be granted. Docket 13. The time for objecting to the report and recommendation has passed. *See id.* The government filed a notice of no objections, Docket 14, and Farrell has not filed any objections. The court has considered the case de novo and adopts the report and recommendation in full. Thus, it is

ORDERED that the Magistrate Judge's report and recommendation (Docket 20) is adopted in full and respondent's motion to dismiss (Docket 7) is granted. Farrell's motion under 28 U.S.C. § 2255 (Docket 1) is dismissed.

IT IS FURTHER ORDERED that based upon the reasons set forth herein and pursuant to Fed. R. App. P. 22(b), the court finds that the movant has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Therefore, a certificate of appealability is denied.

DATED March 31, 2023.

BY THE COURT:

/s/ Karen E. Schreier
KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE